

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia

APRIL TERM, 1928.

No. 4805.

574

DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

EDITH W. ELY.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 10, 1928.

PRINTED SEPTEMBER 11, 1928.

Court of Appeals of the District of Columbia

APRIL TERM, 1928.

No. 4805.

DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

EDITH W. ELY, DEFENDANT IN ERROR.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original	Print
Caption	1	1
Declaration	2	1
Bill of particulars.....	3	3
Affidavit of plaintiff.....	4	4
Agreed statement of facts.....	7	6
Judgment	9	8
Bill of exceptions.....	10	9
Memorandum of the court's finding.....	12	10
Assignment of errors.....	14	12
Designation	14	12
Writ of error.....	15	13
Clerk's certificate.....	16	14

Court of Appeals of the District of Columbia

No. 4805.

DISTRICT OF COLUMBIA, Plaintiff in Error.

vs.

EDITH W. ELY.

1 Municipal Court of the District of Columbia

No. A-4336.

EDITH W. ELY, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Municipal Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

2 In the Municipal Court of the District of
Columbia.

At Law No. A 5336.

EDITH W. ELY, Address: 50 S St., N. W., Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

Declaration.

Filed September 30, 1927.

Plaintiff sues defendant for balances of salary due plaintiff as teacher in the public schools of the District of

Columbia in respect of the periods following, pursuant to the provisions of Act of Congress approved June 4, 1924, Article I, Class 1, Group A, and Article IV; and says plaintiff was on June 30, 1924, a teacher on permanent tenure at an annual salary of \$1540.00; that for the fiscal year beginning July 1, 1924, plaintiff was duly assigned to said salary Class 1, Group A, and her service has been satisfactory; that prior to the year ending June 30, 1924, she had twelve years experience in teaching in positions in accredited schools like that which she held on July 1, 1924; and that her claim is as follows:

Period of ten months, school year, ending June 30.	Salary claimed, in ten equal monthly instalments, pursuant to above act.	Salary paid.	Balances claimed.
1925	Sec. 4, par. (c) . . \$1,600. plus 100. Sec. 4, par. (d) Sec. 6, par. (q) . . 300.		
	Total for year . . \$2,000.	\$1,800.	\$200.
1926	Rate of pre- vious year . . \$2,000. Sec. 7 100.	\$1,800. 100.	
	Total for year . . \$2,100.	\$1,900.	\$200.
1927	Rate of pre- vious year . . \$2,100. Sec. 7 100.	\$1,900. 100.	
	Total for year . . \$2,200.	\$2,000.	\$200.
	Total principal claim		\$600.
	Interest on monthly balances to June 30, 1927		49.50
	Wherefore she brings this suit and claims		\$649.50
	with interest on \$600.00 from June 30, 1927.		
	PEELLE, OGILBY & LESH, By PAUL E. LESH.		
	<i>Attorneys for Plaintiff.</i>		

3 In the Municipal Court of the District of Columbia

At Law No. A 4336.

EDITH W. ELY, Plaintiff,

VS.

DISTRICT OF COLUMBIA, Defendant.

Bill of Particulars.

Filed September 30, 1927.

Balances of salary due plaintiff as teacher in the public schools in respect of the periods following, pursuant to the provisions of Act of Congress approved June 4, 1924, Article I, Class 1, Group A, and Article IV:

Period of ten months, school year, ending June 30.	Salary claimed, in ten equal monthly instalments, pursuant to above act.	Salary paid.	Balances claimed.
1925	Sec. 4, par. (c) .. \$1,600. plus 100. Sec. 4, par. (d) Sec. 6, par. (q) .. 300. Total for year... \$2,000.	\$1,800.	\$200.
1926	Rate of pre- vious year \$2,000. Sec. 7, ... 100. Total for year... \$2,100.	\$1,800. 100.	\$200.
1927	Rate of pre- vious year \$2,100. Sec. 7 100. Total for year... \$2,200.	\$1,900. 100.	\$200.
Total principal claim			\$600.
Interest on monthly balances to June 30, 1927			49.50
Amount sued for			\$649.50
with interest on \$600. from June 30, 1927.			

PEELE OGILBY & LESH,
By PAUL E. LESH.

Attorneys for Plaintiff.

4 In the Municipal Court of the District of Columbia.

At Law. No. A-4336.

EDITH W. ELY, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

Affidavit of Plaintiff.

Filed September 30, 1927.

DISTRICT OF COLUMBIA, ss:

Edith W. Ely, being first duly sworn, deposes and says that she is the plaintiff in the above entitled case, and has a just cause of action against the defendant, the District of Columbia, upon the following grounds:

Deponent was during the school year ending June 30, 1924, a teacher in the public schools of the District of Columbia, on permanent tenure in salary class, as the salaries of teachers are classified according to the Act of Congress approved June 20, 1906, and amendments thereto known as the Organic School Act, then in force. That deponent thereafter continuously remained during the periods herein mentioned a teacher in the said public schools, and has, since her original appointment therein, rendered satisfactory service.

That for the year ending June 30, 1924, deponent received a basic salary of \$1,200, pursuant to said Organic Act as amended, and a bonus of \$240, pursuant to the Acts of Congress applicable to teachers and many other civil employees of the government, plus four annual increase, for prior service, of \$25, a total annual salary of \$1540.

That during the fiscal year ending June 30, 1925, deponent was duly assigned to Group A, Class 1, as the salaries of teachers are classified by the Act of Congress approved June 4, 1924.

Deponent was paid during the fiscal year ending June 30, 1925, as salary, the sum of \$1800, in ten monthly installments of \$180 each, paid and payable the last days
5 of September to June, inclusive; and during the fiscal year ending June 30, 1926, \$1900.00, in like

monthly instalments of \$190. each; and during the fiscal year ending June 30, 1927, \$2000.00, in like monthly instalments of \$200. each.

Deponent is advised that her salary for the fiscal year ending June 30, 1925, should have been the sum of \$2000.00, and for the fiscal year ending June 30, 1926, the sum of \$2100.00, and for the fiscal year ending June 30, 1927, the sum of \$2200.00, each of said annual salaries payable in ten equal monthly instalments on the last days of the months of September to June, inclusive.

That there is therefore due the plaintiff in respect of said periods of service the sum of \$600.00, with interest on said monthly instalments, the interest amounting to June 30, 1927, to the sum of \$49.50.

The basis of deponent's claim is that said Act of June 4, 1924, directed in Article IV, Section 4, paragraphs (c) and (d), that for the year ending June 30, 1925, deponent should receive the salary in the class to which she was assigned next above her then (June 30, 1924) present compensation, that is, \$1600.00, and, in addition, for the year beginning July 1, 1924, one annual increase of salary of \$100, and that she should be entitled to longevity placement as provided in section 6; and directed in said section 6, paragraph (q) that teachers such as the deponent assigned to class 1 and in the service on July 1, 1924, should receive longevity increase according to their previous number of years of experience in like positions in accredited schools to which they held on July 1, 1924, with the proviso, however, that no teacher should so receive credit for more than four years of experience; prior to the year ending June 30, 1924, deponent had twelve years of experience in teaching in positions in accredited schools like that which she held on July 1, 1924; deponent is advised that the one annual increase directed by Article IV, Section 4, Paragraph (c), to be received by her, was in respect of the year of experience ending June 30, 1924, and deponent was thereby
6 entitled to at least three additional increase- of \$100; making a total of \$2000.00 for the year beginning July 1, 1924, and ending June 30, 1925.

The further basis of deponent's claim is that it was provided in Article V, Section 7, that teachers such as deponent should receive annual increases of \$100 on July 1,

1925, and thereafter annually without action of the Board of Education.

Wherefore the deponent claims there is due to her from the District of Columbia the sum of Six Hundred Forty-nine Dollars and Fifty Cents (\$649.50), with interest on Six Hundred Dollars (\$600.00) from June 30, 1927, exclusive of all set-offs and just grounds of defense.

(MRS.) EDITH W. ELY.

Subscribed and sworn to before me this 27th day of September, 1927.

(Notary Seal.) R. S. HARRINGTON,
Notary Public for the District of Columbia.

7

Agreed Statement of Facts.

It is hereby agreed between the parties hereto, through their respective counsel, that the above entitled cause shall be tried and judgment rendered on the facts hereinafter set out, an affidavit on the part of the defendant being waived.

The plaintiff herein was appointed a teacher in the public schools of the District of Columbia on September 1, 1892, and thereafter continuously served as such teacher until June 30, 1900, and was reappointed April 2, 1918, and thereafter continuously served as such teacher in the salary classes for the periods of time, and at the salaries, and was given increases and allowances, as set out in the following schedule:

		Basic	Bonus	Longevity
		salary		
Appointed teacher	9-1-92— 6-30-93	\$400	...	...
Appointed teacher	9-1-93—12-31-93	425	...	...
Promoted	1-1-94— 3-31-94	450	...	...
Promoted	4-1-94— 6-30-94	475	...	...
Appointed teacher	9-1-94— 6-30-95	550	...	...
Appointed and promoted	9-1-95— 6-30-96	650	...	...
Promoted to Asst. Supv. of Primary Instruction	9-1-96— 6-30-97	700	...	...
Appointed Asst. Supv.	9-1-97— 6-30-98	750	...	...
Appointed Asst. Supv.	9-1-98— 6-30-99	800	...	...
Appointed Asst. Supv.	9-1-99— 6-30-1900	900	...	...
Resigned 8-1-1900 and became Mrs. Edith Webster Ely.				
Appointed (temporary)				
Teacher Cl 2	4-2-18— 6-30-18	600	60	...
Cl 2	9-1-18— 4-31-19	750	120	25

				Basic salary	Bonus	Lon- gevity
Appointed (permanent)						
Teacher	Cl 2		5-1-19— 6-30-19	750	120	25
	Cl 2		9-1-19— 6-30-20	860	240	50
	Cl 2		9-1-20— 6-30-21	1200	240	75
	Cl 2		9-1-21— 6-30-22	1200	240	100
	Cl 2		9-1-22— 6-30-23	1200	240	100
	Cl 2		9-1-23— 6-30-24	1200	240	100
	Cl 1A		9-1-24— 6-30-25	1400	...	400
	Cl 1A		9-1-25— 6-30-26	1400	...	500
	Cl 1A		9-1-26— 6-30-27	1400	...	600

She was a teacher on permanent tenure on June 30, 1924, in Salary Class 2, receiving a salary of \$1540 per year; that for the fiscal year ending June 30, 1925, she was paid a total salary of \$1800, and that she has been given an in-

crease of \$100 each succeeding year. That teachers
8 are paid in ten monthly instalments from September to the following June, both inclusive.

The positions she held on June 30, 1924, and thereafter, were positions in accredited schools like that which she held on July 1, 1924, and thereafter.

That the claim of the plaintiff has not been passed upon, on the merits, by the Comptroller General, that official taking the position that claims for salaries higher than those paid by the administrative officials must be made, if at all, by suit against the District of Columbia, and that his office is not concerned with such claims unless the opinion of his office should be requested by the administrative officials, and the school authorities declined to ask an opinion of the Comptroller General upon the question urged by the claimants having this class of cases.

That the estimates transmitted to Congress for the payment of teachers, including the plaintiff, have not included sums to pay the plaintiff in accordance with her claim made herein, and appropriations were made only sufficient in amount, apparently, to cover said estimates; there remained undisbursed, however, of the appropriations for salaries of teachers for the fiscal years ending June 30, 1925, \$—; 1926, \$49,729.82; 1927, \$147,092.59.

That the official prints of hearings before the Committees of Congress and the reports on the bill which was enacted as the salary act of June 4, 1924, and the several official prints of that bill made during its pendency, may be considered in evidence, and such extracts therefrom as may

be relied on by counsel may be called to the attention of this Court and any appellate court, with like effect as though set out at large in this stipulation.

9 That the agreements in this stipulation made to the effect that certain facts are true shall not be considered as a concession on the part of either the plaintiff or the defendant that the facts so agreed upon are relevant or material to the solution of the controversy herein.

It is further agreed that if the plaintiff has been correctly paid under the said Act of Congress, the judgment herein is to be for the defendant; if not, and her salary should have been as set out in her declaration and affidavit, the judgment is to be for the plaintiff for the sum of \$649.50, with interest on \$600.00 from June 30, 1927; that is some other amount in excess of the amount paid to the plaintiff is found by the Court to be the amount that should have been paid her as salary, the amount of the judgment for the plaintiff shall be such excess as shall be found by the Court.

PEELLE, OGILBY & LESH,
By PAUL E. LESH,
Attorneys for the Plaintiff.

W. W. BRIDE,
F. H. STEPHENS,
Attorneys for Defendant.

* * * * *

Judgment.

July 20, 1928. Min. 34, Page 453.

It appearing under Rule of Court that judgment on the finding in this cause should be entered, it is so ordered. Wherefore, it is considered that the plaintiff receives of the defendant the sum of Six Hundred Forty-nine Dollars and Fifty Cents (\$649.50), with interest on \$600 from June 30th, 1927, and costs, and have execution thereof.

10 In the Municipal Court of the District of Columbia.

At Law. No. A-4336.

EDITH W. ELY, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

Bill of Exceptions.

Be it remembered, That the above entitled cause came on for hearing April 13, 1928, in the Municipal Court of the District of Columbia before the Honorable James A. Cobb, judge of the said Municipal Court, upon an agreed statement of facts and certain official prints which were offered in evidence on behalf of the defendant and read, in part, to the Court, to wit:

1. "Hearings before the sub-committee of the committee on the District of Columbia House of Representatives Sixty-Eighth Congress First Session on H. R. 6576 and H. R. 6721." "March 1 and 3, 1924."

2. A print of H. R. 6721 as reported May 12, 1924, in the Senate which became the Act of June 4, 1924.

3. House of Representatives Report No. 302 of the committee on the District of Columbia of March 14, 1924, "to accompany H. R. 6721," to the House of Representatives.

4. Senate Report No. 521 of the committee on the District of Columbia of May 12, 1924, "to accompany H. R. 6721" to the Senate.

11 A print of said hearing (Print No. 1 above) in full and prints of said bill and reports (Prints Nos. 2, 3 and 4 above), from which have been deleted immaterial portions thereof not relied on by either party, are attached to the case of Marian A. Newman versus District of Columbia, No. A. 4338, and made parts of this bill of exceptions.

There was no other evidence.

After argument by counsel and consideration by the Court, it was adjudged that the plaintiff recover of the

defendant the sum of \$649.50, with interest on \$600.00 from June 30, 1927, and costs; to which ruling and judgment an exception was duly taken by the defendant and allowed by the Court, and notice given of intention to apply to the Court of Appeals for a writ of error to review the proceedings herein.

Given under my hand and seal, now for then, this 24th day of July, 1928.

[Seal Municipal Court of the District of Columbia.]

JAMES A. COBB.

True copy, Test:

BLANCHE NEFF,
Clerk.

12 *Memorandum of the Court's Finding.*

The facts in the above entitled cases are agreed by stipulation of counsel.

The question in these cases to my mind is not dependent for its solution on what was understood by the Superintendent of Schools, or by the school teachers, but upon what the intention of Congress was, which intention must be gathered from the language of the statute itself. I am mindful of the fact that, where there is doubt and seeming conflict, resort may be had to the hearings before Congress as well as the debates that took place by the members of Congress, in order to ascertain the true meaning of the Act. But after all, as above stated, the Act itself, where the meaning can be gathered from its language, is the true guide.

It is a familiar rule of law that, where there are several sections of an Act, that all must be given full force and effect, unless they are absolutely irreconcilable, and if so, the whole Act may be searched to ascertain the true intent and meaning of the legislative body that cast it into law. Applying the above rule of construction, it seems to me, that full force and effect can be given to both sections *four* and *six* of the Act, which are entirely compatible and harmonious with the intent and purpose of Congress.

These sections, that is the relevant portions thereof, are designated as follows: Article IV, section 4, paragraphs (c) and (d); and Section 6, paragraph (q).

Article IV, Section 4, covers the method of assignment of employees to salaries for the year ending June 30th, 1925. This section provides that the teachers assigned to the groups and classes here involved shall receive the salary in a class or group under the present law, which is next higher than their salaries on June 30th, 1924, under
13 the Act of 1906, and receive in addition one annual increase of \$100.

Article IV, Section 6, is not only a careful transfer of teachers from classifications under the old law of 1906 to the salaries and groups provided for in the present Act, but also fixes the longevity increase of teachers according to their previous number of years of experience in teaching in like positions in accredited schools. It also provided that * * * "No teacher or other employee shall be placed in the salary schedule for more than the fourth year of experience in classes 1, 2, Group A, or 4."

For further enlightenment as to the construction of the two sections involved here, resort may be had to Section 4, paragraph (d), which provides as follows:

"That teachers and other employees assigned to classes 1, 2, 3, and 4, in the foregoing schedule shall be entitled to longevity placement as provided in Section 6."

It would seem to be manifest from the foregoing that Section 6 is to govern in regard to longevity placement, and that it is mandatory upon the Board of Education to fix the longevity increase of the teachers' salaries according to the provisions of the section, regardless of the seeming inequities of the teachers' time of service, provided that no teacher be thereby placed in the salary schedule for more than the fourth year of experience in the classes heretofore designated.

Therefore, the Court is of the opinion that the salaries of these teachers can be ascertained by applying Section 4 to all of them, if they were all in the service of the schools on June 30th, 1924, and by applying Section 6 to such of them as were entitled to longevity credit for service prior

to the year ending June 30th, 1924. Each individual case will be worked out in accordance with this finding.

The entry of judgment herein will be held up pending such time as will be convenient for counsel to make the proper application for a writ of error.

JAMES A. COBB,
Judge.

June 16th, 1928.

14 *Assignment of Errors.*

Filed July 24, 1928.

Now comes the District of Columbia, by its counsel, and assigns for error,—

1. The action of the Court in entering judgment for the plaintiff herein.

2. The ruling of the Court holding that the plaintiff was entitled to longevity pay, in addition to the salary which had been paid to the plaintiff by the defendant.

W. W. BRIDE.
F. H. STEPHENS.
Attorneys for Defendant.

Service acknowledged.

PAUL E. LESH,
Attorney for Plaintiff.

Designation of Record.

Filed July 25, 1928.

The clerk of the court will please prepare a transcript of the record in the above entitled cause, for the Court of Appeals, consisting of,—

1. The declaration, affidavit and bill of particulars.
2. The agreed statement of facts.
3. The judgment and appeal.
4. The bill of exceptions.
5. Opinion of Judge Cobb.
6. The assignment of errors.
7. This designation.

W. W. BRIDE.
F. H. STEPHENS.
Attorneys for Defendant.

15 UNITED STATES OF AMERICA, ss:

Filed July 23, 1928. Municipal Court, District of Columbia.

The President of the United States to the Honorable James A. Cobb, Judge of the Municipal Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Municipal Court, before you, between Edith W. Ely, Plaintiff, and District of Columbia, Defendant, No. A-4336, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 20 days from the settling of the bill of exceptions, or within such additional time after the expiration of the 20 days as the court below or a judge thereof for sufficient cause shall allow; that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the 23rd day of July, in the year of our Lord one thousand nine hundred and twenty-eight.

[Seal Municipal Court of the District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by
GEORGE E. MARTIN,
Chief Justice of the Court of Appeals of the District of Columbia.

16 Municipal Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Blanche Neff, Clerk of the Municipal Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 16, both inclusive, to be a true and correct transcript of the record, according to direction of counsel herein filed, copy of which is made part of this transcript, in Cause at Law, No. A-4336, wherein Edith W. Ely, is plaintiff, and District of Columbia, is defendant, as the same that remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 10th day of August, 1928.

[Seal Municipal Court of the District of Columbia.]

BLANCHE NEFF,
Clerk.

Endorsed on cover: District of Columbia Municipal Court. No. 4805. District of Columbia, plaintiff in error, vs. Edith W. Ely. Court of Appeals, District of Columbia. Filed Aug. 10, 1928. Henry W. Hodges, clerk.

